IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9617 of 2011

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1. Hari Mohan Singh S/O Late Ram Briksh Singh Resident Of Kunjgali, Bhadra Ghat, Gulzarbagh, P.S. Alamganj, District- Patna
2. Syed Aziz Ahmad, Son Of Late Syed Mohammad Ahmad Resident Of Mohalla- Sharif Colony, P.S. Pirbahore, Patna
3. Mohammad Ehsannullah S/O Late Syed Mohammad Isa R/O Banwaritola, Sadar Gali, P.S. Khajekalan, District- Patna
4. Md. Israil S/O Late Md. Ibrahim R/O Alam Ganj, Pathantoli, Gulzarbagh, P.S. Alamganj, District- Patna
5. Mohmood Alam S/O Late Abdul Hafiz Resident Of Kazmi Begam Womens College Campus Guzari, Patna City, P.S. Khazekalan, District- Patna
6. Syed Md. Sajid S/O Late Mohammad Afzal R/O Shareef Colony, P.S. Pirbahore, District- Patna
7. Syed Mohammad Omair Ahmad S/O Late Maqbool Jan R/O Old Khajoor Banna Near Devi Asthan, P.S. Sultanganj, District- Patna
8. Shakir Hussain Son Of Late Md. Mobinuddin Resident Of Darul Mobin 'SANDAL Nagar, New Azimabad Colony, P.S.- Bahadurpur, District- Patna 800006
9. Abda Shakeb W/O Late Shere Islam Ayaz R/O Nawab Bahadur Colony, N.B. Road, Patna, P.S. Khajekalan, Patnacity, District- Patna
10. S. Nafis Haidar S/O Late Zafir Ahsan Resident Of Nafees Palace, Shareef Colony, Baripath, P.S.- Pirbahore, District- Patna
11. Syed Sajid Hussin S/O Late Syed Mohammad Hussain R/O Darul Aman Jamun Gali, Bhanwar Pokhar, P.S. Kadamkuan, District- Patna
12. Mrs. Aliya Hussain W/O Syed Ahmad Saghir R/O 322/311, New Patliputra Colony, P.S. Patliputra, District- Patna
13. Akhter Hussain S/O Late Dabirul Hussain Resident Of Village Halamala, P.S. Kishanganj, District- Kishanganj
14. Haroon Rashid S/O Late Md. Ibrahim R/O North Of Professor Colony, Tripolia, P.S. Alamganj, District- Patna
15. Syed Faiyaz Ahamd S/O Late Syed Badruddin Ahmad R/O Sadar Gali, Patna City, P.S. Khajekalan, District- Patna

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources And Development Department, Govt. Of Bihar, New Secretariat, Patna
3. The Director, Human Resources And Development Department (Higher Education), New Secretariat, Patna
4. The Magadh University Through Its Registrar, Bodh Gaya
5. The Vice Chancellor, Magadh University, Bodh Gaya
6. The Registrar, Magadh University, Bodh Gaya
7. The Financial Advisor, Magadh University, Bodh Gaya

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 8414 of 2017

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1. Md. Ali Imam, Son of Late Md. Rizwan Resident of Village - M.N. Colony, Post Office + Police Station + District - Siwan.
2. Md. Raza Son of Late Md. Jan Resident of near Z.A. Islamia College, Post Office + Police Station + District - Siwan.
3. Shahida Khatoon wife of Late Md. Islam Resident of Village - M.N. Colony, Post Office + Police Station + District - Siwan.
4. Urmila Sharma Wife of Late Dhruvdeo Sharma Resident of Village Nai Basti Mahadeva near Amlori House, Post Office + Police Station + District - Siwan.
5. Syed Mohammad Raziuddin Aqdas Son of Mohammad Shahabuddin Resident of Village - Kash Takiya, Post Office - Biharsharif, District - Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
3. The J.P. University through its Registrar, Chapra.
4. The Vice Chancellor, J.P. University, Chapra.
5. The Registrar, J.P. University, Chapra.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 17286 of 2011

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1. Md.Idris Ansari, aged about 66 years, son of late Abdur Rahman, Retd. Reader, Department of Political Science, Z.A. Islamia College, Siwan, Jai Prakash University, Chappra presently residing at New Millat Colony, Sector-2, P.O. & P.S. Phulwarisharif, District- Patna
2. Dr. Taiyab Hussain, aged about 67 years, son of Md. Ishaque Retd. Reader, Department of Hindi, Z.A. Islamia College, Siwan, Jai Prakash University, Chappra, presently residing at New Azimabad Colony, P.O. Mahendru, P.S. Sultanganj, District- Patna
3. Nesar Ahmad, aged about 66 years, son of Late Mohammad Haneef, Retd. Demonstrator, Department of Physics, Z.A. Islamia College, Siwan, Jai Prakash University, Chappra, presently residing at Sirisia Bazar, P.O. Sasamusa, P.S. Kuchaikot, District-Gopalganj’
4. Bairendra Nath Mishra, aged about 66 years, son of Late Dhaarm Nath Mishra, Retd. Reader, Department of Hindi, Z.A. Islamia College, Siwan, Jai Prakash University, Chappra, presdently residing at Mahpur, P.O. Faridpur (Ander) P.S. Hussain Ganj, District- Siwan
5. Shambhu Nath Prasad, aged about 66 years, son of Shri Jagdish Prasad Gupta, Retd. Reader, Department of Economics, Z.A. Islamia College,

Siwan, Jai Prakash University, Chappra, presendly residing at Gupta Niwas, Mahalla- Makadoom Sarai, P.O. & P.S. Siwan, District- Siwan

6. Md. Badiuzzaman, aged about 66 years, son of Late Md. Reyazuddin, Retd. Professor, Department of Political Science, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Road No. 10, New Karimganj, P.O. Gaya P.S. Civil Line, Gaya, District- Gaya
7. Md. Quaem, aged about 67 years, son of late Abdul Basit, Retd. Professor, ? Department of History, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Bari Road, Mallick Lane, P.O. Gaya, P.S. Civil Line Gaya, District- Gaya
8. Razaul Haque, aged about 68 years, son of late Rashidul Haque, Retd. Professor, Department of Psychology, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Bari Road, A/45, Aenalt Colony, P.O. Gaya, P.S. Civil Line Gaya, District- Gaya
9. Zeyarat Hussain Khan, aged about 68 years, son of late Md. Raza Khan, Retd. Reader, Department of English, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Sir Syed Colony, Road No. 6, New Karimganj, P.O. Gaya, P.S. Civil Line, Gaya, District- Gaya
10. Md. Anwar, aged about 73 years, son of Md. Hannan, Retd. Professor, Department of Urdu, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Aliganj, Road No. 6, Chandauti, P.O. Gaya, District- Gaya
11. Siya Ram Tiwari, aged about 65 years, son of late Deomoon Tiwari, Retd. Professor, Department of Hindi, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Karnpura, P.O. Modika, P.S. Sigori Paliganj, District- Patna
12. Ahmad Hussain Azad, aged about 67 years, son of late Md. Hanif, Retd. Professor, Department of Persian, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Aliganj, Road No. 6, P.O. Gaya, p.s. Chandauti, District- Gaya
13. Sada Nand Gurda, aged about 73 years, son of late Damodar Lal Gurda, Retd. Professor, Department of Hindi, Mirza Ghalib College, Gaya, Magadh University, Bodh Gaya, presently residing at Krishna Dwarika, Vishunpad, P.O. Gaya, P.S. Civil Line, Gaya, District- Gaya
14. Md. Shafayat, aged about 66 years, son of late Elahi Bakhsh, retd. Professor, Department of Chemistry, Oriental College, Patna City, Magadh University, Bodh Gaya, presently residing at Sheesh Mahal Colony, Alamganj, P.O. Gulzarbagh, P.S. Alamganj, District- Patna

... ... Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Human Resources Development Department (Higher Education), Government of Bihar, Patna
2. Secretary, Department of Higher Education, Government of Bihar, Patna
3. Jai Prakash University, Chappra through its Registrar
4. Vice-Chancellor, Jai Prakash University, Chappra
5. Registrar, Jai Prakash University, Chappra
6. Magadh University, Bodh Gaya, through its Registrar
7. Vice-Chancellor, Magadh University, Bodh Gaya
8. Registrar, Magadh University, Bodh Gaya

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4835 of 2016

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1. Dr. Shakeel Ahmad ,aged about 73 Years S/o late Md. Badruddin Resident of K. 48, ISt Floor Sailing Club Road, Batla House , Jamia Nagar, Okhla New Delhi.
2. Kamaluddin Muztar S/o late Md. Sardar Ali C/o Dr. Gulam Rabbani Jauhar , Resident of Village Islam Nagar Near Masjid Gumti No. 3, Bhagalpur Bihar.
3. Md. Habib S/o late Abdul Rashid Resident of Phulwari , Khagaria tola Gewal Bigha, PS Rampur, District Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Higher Resources Education Department Govt. of Bihar.
3. The Director, Deptt. of Education Govt. of Bihar Patna.
4. The Magadh University Bodh Gaya through its Registrar.
5. The Registrar Magadh University Bodh Gaya.
6. The Financial Advisor , Magadh University, Bodh Gaya.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12376 of 2014

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1. Bazayat Imam Son of Late Khalil Ahmad Resident of Rasheed Colony, Near Adda No. 2, Babunia Road, Post Office+ Police Station+ District- Siwan
2. Shanti Kumari Wife of Sri Uma Shankar Prasad Resident of Fatehpur Nayatola, Post Office- Siwan, District- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources and Development Department, Government of Bihar, New Secretariat, Patna.
3. The Director, Human Resource and Development Department (Higher Education) New Secretariat, Patna.
4. The J.P. University through its Registrar, Chhapra.
5. The Vice- Chancellor, J.P.University, Chhapra.
6. The Registrar, J.P. University, Chapra.
7. The Financial Advisor, J.P.University, Chhapra.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinod Kanth, Sr. Advocate
Mr. Yugal Kishore, Sr. Advocate

		Mr. Virendra Prasad, Advocate
		Mr. Ugra Nath Mallik, Advocate
		Ms. Nutan Sahay, Advocate
		Mr. Sanjay Kumar, Advocate
		Mr. Shubh Naain Singh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Advocate General
		Mr. Manish Dhari Singh, AC to AG
		Mr. Khurshid Alam, AAG 12
		Mr. Arun Kumar Bhagat, AC to AAG-12
		Mr. Madhav Prasad Yadav, GP-23
		Mr. Arbind Kumar, AC to GP-23
For Magadh University	:	Dr. Kumar Amitesh Chandra
For J.P. University	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Nagendra Kumar Singh, Advocate
		Mrs. Soni Srivastava, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 08-11-2017

In this batch of writ petitions petitioners have challenged the constitutional validity of Resolution of the State Government contained in Memo No. 171 dated 18.01.2011 and Para-7 of the order contained in memo no. BSU 47/2013-93 GS (i) dated 15.01.2014, whereby the Chancellor of the Universities, in exercise of power under Section 36 (7-proviso) of the Bihar State Universities Act, 1976, has approved the amendment in the existing Statute of Triple Benefit Scheme with effect from 31.8.2010.

2. In all the writ petitions common question of fact and law is involved and as such, with the consent of the parties, all the writ

petitions have been heard together and are being disposed of by this common judgment. In order to decide this batch of writ petitions, I have taken into consideration the pleadings and foundational facts pleaded in CWJC No. 4835 of 2016 as representative case.

3. The petitioners have assailed the validity of the Resolution of the State Government dated 18.01.2011, Annexure-7 to the writ petition, on the ground that it creates a class within the class and it is in the teeth of the judgment of the Apex Court in the case of D.S.Nakara and others Vs. Union of India: AIR 1983 Supreme Court 130 = (1983) 1 SCC 304. Petitioners have also challenged the validity of amendment introduced vide Memo No. BSU 47/2013-93 GS (i) dated 15.1.2014, Annexure-8 to the writ petition fixing 31.8.2010 as cut-off date for granting Triple Benefit Scheme as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India as the aforesaid amendment is contrary to the law laid down by the Apex Court in the case of D.S.Nakara (supra).

4. In order to appreciate the controversy involved in this batch of writ petitions, instead of entering into the gamut of facts, I would like to only discuss the relevant and material facts for deciding the present batch of writ petitions. Petitioners in all

the batch of writ petitions are retired employees of the Aided Minority Institution receiving grant-in-aid. They retired before coming into force the amendment in the Triple Benefit Scheme introduced vide memo no. BSU 47/2013-93 GS(i) dated 15.1.2014 which was effective from 31.8.2010.

5. Under the scheme of Bihar State Universities Act, 1976 (hereinafter referred to as the University Act), a detailed procedure has been prescribed for framing of statutes and its amendment under Section 36 of the Act which is quoted below:

> "36. Statutes how made.- (1) The Senate may, either on its own motion or on submission by the Syndicate, make Statutes, or amend or repeal it:
>
> Provided that -
>
> (a) the Senate shall not consider any statute having the effect of changing the number of post of teachers, officers and servants of the University, their pay scales or pay order; unless such a draft is recommended by the Chancellor for the considerations of the Senate;
>
> (b) the Syndicate shall not propose any such statutes, as may affect the status, powers and constitution of any authority of the University, unless that authority has been allowed an opportunity to furnish written opinion upon the proposed changes, and the Senate shall have to consider such option expressed in writing; and

(c) in matters relating to status, powers, functions and constitution of the Academic council, it shall be lawful for the Academic Council to initiate such Statutes and forward it to the Syndicate, which shall submit it to the Senate with such recommendations as it may like to make.

(2) If the draft of any Statutes or a portion thereof, after being presented by the Syndicate before the Senate is sent back to the Syndicate for reconsideration, and the Syndicate does not agree, after reconsideration, to the amendments suggested by the Senate, then it shall be lawful for the Senate to pass the Statutes or a portion of the Statutes in such form as it may deem appropriate, and the decision of the Senate shall, subject to the provision contained in sub-section (3) and sub-section (4) be final;

(3) Where the Senate has passed the draft of any Statute it shall be submitted to the Chancellor who shall declare that he assents thereto as passed by the Senate or with such amendments as he deems proper;

Provided that the Chancellor may as soon as possible, after the presentation to him of the draft of the Senate so passed for assent, return the drat together with a message request that the Senate shall reconsider the draft and when the draft is so returned, the Senate shall reconsider the draft accordingly and if the draft is passed again by the Senate with or without any amendment and is presented to the Chancellor for asset, the Chancellor shall declare either that he assets thereto with such amendments which he deems proper or that he withholds assent therefrom;

(4) where any member of the Senate proposes to the Senate of the draft of any Statute, the Senate shall refer the same to the Syndicate, and it shall thereupon be the duty of the Syndicate to consider the draft and the Syndicate may either recommend to the Senate that the proposal be rejected or submit the draft to the Senate in such form as the Syndicate may approve, and the provisions of this Section shall apply in the case of any draft so submitted as they apply in the case of the draft proposed to the Senate by the Syndicate.

(5) A Statute passed by the Senate shall have no validity until it has been assented to by the Chancellor.

(6) Notwithstanding anything contained in the above clauses, if at any time when the Senate is not in session and the Chancellor is satisfied that it is necessary to frame Statutes on any subject, the Chancellor after obtaining the advise of the Inter-University Board shall send the draft Statute for opinion to the Syndicate of the University and it shall be binding on the Vice-Chancellor to convene a meeting of the

Syndicate for consideration of the draft statutes within ten days of receipt of the said draft. The Chancellor shall then give his assents to the Statutes with such amendments as may deem necessary in the light of the opinion of the Syndicate. The Statutes shall be deemed to have come into force in the University from the date of assent. Statutes framed in this manner shall be placed before the next meeting of the Senate for confirmation.

Provided that if there be any financial implication which may arise under the Statute, it shall not be enforceable unless prior approval of the State Government has been obtained.

(7) Notwithstanding anything contained in the above clause, if at any time, the Chancellor is satisfied that it is necessary to framed a statute of any subject of common interest, after obtaining the advise of the Committee of three Vice-Chancellors for opinion, who shall send their opinion within ten days from the receipt of draft. The Chancellor shall give assent to the Statute with such amendment as he may deem necessary in the light of the opinion of the Vice-Chancellor. The Statute shall be deemed to come into force in the Universities from the date of assent.

Provided that the State Govt. may also suggest the Chancellor to framed Statute of any subject of common interest of all the Universities."

6. Way back on 5.1.1980 vide Resolution No. 1500, the Government of Bihar through the Education Department issued resolution introducing General Provident Fund-cum-Pension-cum-Gratuity benefit in the light of the scheme introduced by the UGC in Central Universities on 1.4.1964. The aforesaid Triple Benefit Scheme was made effective from 1.4.1978 and option was available to the employees to be exercised who joined service before 1.4.1978 either to opt Contributory Provident Fund Scheme, Contributory Provident Fund-cum-Gratuity Scheme Or General Provident Fund –cum-pension-cum- Gratuity Scheme. This option was also available to those teaching and non-teaching employees who retired in between 1st April, 1972 to 31st March, 1978. Accordingly, the statute for grant of retirement benefit was approved by the Chancellor vide memo no. BSU 5285 GS (1) dated 18.11.1980 which is known as Triple Benefit Scheme. The said Statute was subsequently amended on 25.11.1982 vide letter no. BSU 52/80/2158 GS (i), the scheme for grant of retirement benefit was amended by Statute of 1982 which was effective from 14.11.1980, applicable to whole time employees belonging to

teaching and non-teaching staff of the University Constituent Colleges who were in service on 1.4.1972 or joined service after that date. Those who joined service on or after 1.4.1972, they were eligible for grant of Triple Benefit Scheme irrespective of exercise of option.

7. The State Government decided to extend the Triple Benefit pension Scheme to the Deficit Grant Affiliated Colleges/Deficit Grant Minority Colleges and the Cabinet on 31.8.2010 approved the proposal for amendment in the Statute. Pursuant to the Cabinet decision dated 31.8.2010, the State Government in the Human Resources Development Department issued Resolution No. 171 dated 18.1.2011. The relevant resolution is quoted herein below:

> "Number–15/M1-152/98 Ansh (Higher Education) 171 dated 18.01.201.
>
> Bihar Government
>
> Human Resources Development Department
>
> Resolution:
>
> Sub: in connection with the approval of the benefit of provident fund-pension-cum-gratuity scheme to teaching and non-teaching employees of minority and other deficit grant colleges under the universities of Bihar.
>
> The Statute for the grant of retirement benefits as approved by the Governor Secretariat letter

no. 5285 GS (1) dated 18.11.1980 containing general provident fund-cum-pension-cum-gratuity scheme, 8% contributory provident fund-cum-gratuity scheme and 10% under triple benefit schemes for the teaching and non-teaching employees of the universities of Bihar and its constituent units, were implemented. Subsequently, the said Statute was amended twice.

2. In continuation, the scheme of provident fund-cum-pension-cum-gratuity is being approved to the teaching and non-teaching employees of minority and other deficit grant colleges under the universities of Bihar, on following terms and conditions:

(i) This benefit is applicable to those teaching and non-teaching employees, who have been appointed on sanctioned post in accordance with law and whose deficit pay is borne by the State Government.

(ii) This amendment provision (Statute) is not applicable to those teaching and non-teaching employees who have retired prior to amendment of the Statute.

(iii) Those teaching and non-teaching employees, appointed on or after 01.09.05, shall get new pension scheme and shall not get the benefit of amended triple benefit scheme.

(iv) This benefit will be limited to those minority deficit grant colleges, in which average 250 students have participated in the examination in preceding 10 years.

(v) At present, if any other deficit grant college fulfills the aforesaid criteria, then the teaching and non-teaching employees of that college, appointed in accordance with law and having required education qualification, shall have this benefit as per the terms and conditions mentioned in the aforesaid paragraphs.

(vi) The benefit of this amendment will be applicable from the date of amendment in the Statute.

By the order of the Governor of Bihar
Sd/-
(Minhaz Alam)
Special Secretary,
Human Resource Development Department."

8. As a follow up of the Resolution of the State Government, amendment was made in the University Statute of Triple Benefit Scheme and the Deficit Grant Affiliated Colleges and Deficit Grant Minority Colleges were included in the Triple Benefit Scheme and the amendment in the Statute was approved by the Chancellor vide Memo no. BSU 47/2013-93 GS (1) dated 15.1.2014. The relevant part of the approved amendment in the Statute is quoted below:

"Letter No. BSU-47/2013- GS(i)
From:
U.K.Choubey

Addl. Secretary

To,

The Vice Chancellor
All the Universities of Bihar
(Except of RAU, Pusa and BAU, Sabour)

Sub: Regarding amendment in the Statutes of Triple Benefit Scheme to allow benefit of Provident Fund-cum-Pension-cum-Gratuity to the teaching and non-teaching employees of deficit grant Minority Colleges and other deficit grant Affiliated Colleges of the State.

Sir,

I am directed to invite a reference to the subject noted above and to say that the Hon'ble Chancellor, after due consideration of the recommendation of the State Govt., vide letter No. 15/-I-152/98 Ansh-1554, dated 21.08.2013 and in exercise of the powers conferred upon him under Section 36 (7-Proviso) of the Bihar State Universities Act, 1976, as amen ded upto date, has been pleased to approve the following amendment in the existing Statute of the Triple Benefit Scheme:-

The Statute for the grant of retirement benefits as approved by the Chancellor notified vide letter no. BSU-52/80-5285/GS(I) dated 18.11.1980 has been amended vide letter no. BSU 52/80-2158/GS(I) dated 25.11.1985 (effective from 14.11.1980). It has further been amended vide letter no. BSU-19/2005-3193/GS(I) dated 21.12.2005 effective from

20.12.2005. The aforesaid statute is hereby further amended in accordance with the decision of the Government of Bihar notified vide Resolution No. 15/MI-152/98 part (Higher Education)-171 dated 18 January, 2011 so as to read that in section 2, after sub-section ‘m’ a new sub section, ‘2n’ is inserted as follows:

2n :- “deficit grant affiliated colleges including deficit grant minority colleges mean colleges established and managed by managing committee including colleges established and managed by religious and linguistic minorities which are already in receipt of deficit grant from the State Govt.”

Further, in section 3.3(1) and 4(a) deficit grant affiliated college including deficit grant minority college is hereby added, besides the existing University/constituent College to extend the post retirement benefit to the employees of these colleges (deficit grant affiliated colleges including deficit grant minority colleges) provided:

1. The employees, teaching as well as non teaching has been legally appointed against sanctioned post and whose deficit of pay and other allowances is borne by the State Government.

2. The post retirement benefit will be available only to those teaching and non-teaching employees of deficit grant affiliated colleges including deficit grant minority colleges who were legally appointed on the sanctioned post on or before 31.8.2005. Employees

appointed after 31.08.2005 will not be entitled to benefit accruing in accordance with this statute.

3. Employees appointed on or after 01.09.2005 will be covered by the new pension scheme adopted by the Govt.

4. The benefit will be given only to the teaching and non-teaching employees working on the effective date of amendment and not to the retired teaching and non-teaching employees.

5. The benefit will be given to the employees of only suchy deficit grant affiliated and deficit grant minority colleges having at least 250 students appearing annually at the University examination consistently during each of the preceding ten years from the date of notification of the resolution.

6. After the amendment made in the Statute, total contribution (State share) including the interest accrued there upon made by the State Government to the teaching and non-teaching employees, appointed before 01.09.2005, who are at present covered under Contributory Provident Fund scheme, shall have to be legally adjusted or recovered, because of being covered under the old pension scheme.

7. The amendment will come into force from 31.08.2010."

9. It is relevant to mention here that the State Government took a policy decision to introduce new pension scheme with effect from 1.9.2005 therefore, while amending the Statute it was

made clear that Triple Benefit Scheme is applicable to those employees who were appointed before 1.9.2005. The Statute also clarified that the Triple Benefit Scheme is only admissible to the teaching and non-teaching employees working on the effective date of amendment in this case on 31.8.2010.

10. Mr. Vinod Kanth, learned Senior Advocate appearing on behalf of the writ petitioners submitted with reference to the judgment of the Apex Court in the case of **D.S.Nakara** (supra) that the action of the respondents in excluding teaching and non-teaching employees who retired before 31.8.2010 is illegal, arbitrary and runs contrary to the law laid down by the Constitution Bench of the Apex Court in the case of **D.S.Nakara** (supra). He submitted that all pensioners who retired before 31.8.2010 are one homogenous class and drawing distinction between teachers and non-teaching employees retired on 31.8.2010 or thereafter would amount to creating class within the class. He submitted that in view of the judgment in **D.S.Nakara's** case (supra), the action of the State and the Universities is unconstitutional and impermissible. He further submitted that there is no rational behind fixing of *cut-off* date as to applicability of the amendment in the Triple Benefit Scheme Statute. He submitted that such arbitrary fixation of *cut-off* date to deprive the

Triple Benefit scheme is arbitrary action of the respondents. He referred to the various paragraphs of the judgment in the **D.S.Nakara's** case (supra) to substantiate that pensioners forms one class and drawing any distinction between the pensioners on artificial basis is violative of Article 14 of the Constitution. Mr. Kanth submitted with reference to paras 2,11,15,31,35,49 and 58 that action of the State does not pass the twin test of reasonable classification. He submitted that Article 14 of the Constitution only permits reasonable classification and the classification has to pass twin test of reasonableness firstly, the classification must be founded on facts which distinguishes persons or others that are brought together from those who are left out and secondly the classification must have rational nexus to the object sought to be achieved. He submitted that amended statute does not pass the test of reasonable classification and as such it is arbitrary and violative of Article 14 of the Constitution of India.

11. Mr. Kanth submitted with reference to the judgment in the case of **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla: (2016) 3 SCC, 619**, particularly paras 31 to 33 that the Court should adopt purposive interpretation and should adopt the path which wheel ahead the objective. He submitted that teachers of University and Constituent colleges and the Deficit Grant

colleges/Deficit grant minority colleges are teachers and as such adopting two different yardstick in the matter of benefit of pension is arbitrary and unreasonable. He submitted that whenever amendment was made, the benefit of amendment was extended to the University employees and the employees of the constituent colleges with retrospective dates whereas in the case at hand teaching and non-teaching employees of Deficit Grant Colleges/ Deficit Grant Minority Colleges have been treated step- motherly and in this case the statute has been made from prospective date.

12. Mr. Yugal Kishore, learned senior counsel appearing on behalf of the petitioners has submitted that similar issue was raised in the Jharkhand High Court in a batch of writ petitions and a Single Judge of the Jharkhand High Court has allowed the writ petitions and issued directions to consider the case of similarly circumstanced teaching and non-teaching staff who were appointed on or before 1.2.2004 and retired prior to issuance of notification dated 19.12.2012, the *cut off* date in the case of Jharkhand.

13. Mr. Lalit Kishore, Advocate General appearing on behalf of the State has submitted that there is rational behind fixing *cut off* date 31.8.2010. Referring to para-7 of the supplementary counter affidavit filed on behalf of the respondent Nos. 1 to 3, he

submitted that Triple Benefit Scheme was extended to the employees of the Deficit Grant Minority Colleges with effect from 31.8.2010 as on that date the cabinet has approved the proposal for the amendment in the Statute and to extend the Triple Benefit Scheme to the Deficit Grant Affiliated Colleges And Deficit Grand Minority Affiliated Colleges and therefore he submitted that submission of Mr. Kanth is totally misconceived. Referring to the submission of Mr. Kanth that the action of the State is most unreasonable, he submitted that there is rationality behind fixing 31.8.2010 as *cut off* date.

14. Mr. Lalit Kishore next submitted that with effect from 1.9.2005 the State has introduced new pension scheme and those who joined service on or after 1.9.2005 are covered by new pension scheme and therefore one cannot find fault or infirmity in excluding those employees appointed on or after 2.9.2005 in the Deficit Grant Affiliated Colleges/Deficit Grant Minority Colleges. Adverting to the submission of Mr. Kanth that pensioners forms one homogenous class and the State has created a class within class by excluding teaching and non-teaching employees from the benefit of such scheme who retired before 31.8.2010. Mr. Lalit Kishore submitted that **D.S.Nakara** Case is settler on the point that State cannot artificially exclude certain

person from the benefit of pensionary scheme by fixing arbitrary *cut off* date from amongst the same homogenous class but the judgment of the **D.S.Nakara** has no application in the instant case as in the present case teachers are not homogenous but heterogeneous class. He submitted that those who are covered by Triple Benefit Scheme, 1980, they are the employees of the University or the Constituent unit of the University and the writ petitioners cannot claim parity with them as they belong to the separate class and they as such cannot be extended the same benefit which was available to the employees of the University and constituent colleges. He submitted that the submission of writ petitioner is fallacious as the employees of Deficit Grant colleges/Deficit grant minority colleges form a different class and cannot claim parity in the matter of application of the benefit of the amendment. He submitted with reference to D.S.Nakara case that in the said case the Apex Court has categorically held out that the retired employees subject-matter of the decision in D.S.Nakara Case (supra) were of homogenous class and in their cases adopting two modalities of computation was held to be illegal and arbitrary. The Supreme Court decided the said case considering the fact that there was no rational between adopting two different modality of computation of pension, i.e., 10 months, average salary and 36 months average salary in view of the liberlised pension scheme, whereas in the instant case the pension scheme was introduced on 31.8.2010 for Deficit Grant Colleges/Deficit Grant Minority Colleges and after introduction of Triple Benefit Scheme, no distinction has been drawn between the employees covered under the said scheme on any artificial basis.

15. Mr. Lalit Kishore referring to the decision of the Jharkhand High court submitted that the decision of the Jharkhand High Court, that too, by a learned Single Judge, has no binding effect. He submitted that even otherwise the said judgment is of no help to the petitioners as in the said judgment there is no consideration of the submission made on behalf of the respondents. The learned Single judge has simply noted the judgments cited on behalf of the respondents in paras 10 and 11 and without consideration of those judgments on which the respondents-State has relied upon decided the writ petition.

16. On the basis of the pleadings of the parties and submissions made by learned senior counsel appearing on behalf of the petitioners and the learned Advocate General appearing on behalf of the State, I find that in order to decide the present batch of writ applications, this Court has to answer the following issues,

(i) What should be the approach of the Court in deciding the constitutional validity of the Statute and interpreting the provisions of the Statute?

(ii) Whether there is any rationality behind fixing *cut off* date 31.8.2010 for the application of the amendment in the Triple Benefit Scheme Statute?

(iii) Whether the exclusion of the teaching and non-teaching employees of Deficit Grant colleges/Deficit Grant Minority Colleges retired before 31.8.2010 is arbitrary and is against the law laid down by the Apex Court in the case of D.S. Nakara (supra) or not?

17. Adverting to the first two questions i.e. (I) approach of the Court in deciding the constitutional validity of Statute and (2) rational behind *cut off* date, Mr. Kanth has heavily relied upon paragraphs 31 and 33 of **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla: (2016) 3 SCC, 619** for the purpose of purposive interpretation, which is quoted below:

> 31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/ purpose of such a provision is achieved thereby. The principle of

'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise. As Aharan Barak puts it:

> "Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language."

33. We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of

> purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well."

18. In the aforesaid judgment the Apex Court has noted the principle of purposive interpretation and purposive construction referring to the Aharon Barak annotation and noted that language, purpose, and discretion are the three basic components of purposive interpretation. The core principle discussed by the Apex Court in that judgment is to ascertain what is designed to accomplish and the court is supposed to realise the goal that the legal text is designed to realise. Reading the amended Statute in the light of the judgment cited by Mr. Kanth, I am of the view that the amended Statute in most unambiguous terms covers only those teaching and non-teaching employees who were appointed before 31.8.2005 and retired from service after 31.8.2010. Therefore, applying the said principle referred to by Mr. Kanth, I am of the

view that applying the Triple test of purposive interpretation, I do not find any merit in the submission of Mr. Kanth to give a different meaning and construction to the amended Statute in the absence of any ambiguity with language and purpose of the amended Statute. The amendment was introduced in the light of the resolution of the State Government dated 18.1.2011 and as such there is no scope for giving different meaning so far as applicability of Triple Benefit scheme Statute is concerned. It is now well settled that if the literal meaning of the Statute is unambiguous, there is no scope for adopting any interpretative process.

19. The Apex Court has laid down the principle to be followed in considering the validity of the Statute in the case of State of Bihar & Ors. Vs. Bihar Distillery Limited and others: (1997) 2 SCC 453, paras 17 to 20 of the said judgment is quoted below:

> 17. Now coming to the reasoning in the impugned judgment, we must say with all respect that we have not been able to appreciate it. The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search

for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application. Now, the result of the impugned Judgment is that the Amending Act has become an exercise in futility - a purposeless piece of Legislation. And this result has been arrived at by pointing out some drafting errors and some imperfection in the language employed. If only the High Court had looked into the minutes of the meeting dated 15th December, 1989 and the two letters of the Commissioner aforementioned, it would have become clear that the Amending Act was doing no more than repeating contents of the said letters and placing the legislative imprimatur on them. As the impugned judgment itself suggests, part of the imperfection of language is perhaps attributable to translation from Hindi to English. Indeed, it is surprising that the Court has not even referred to the long preamble to the Act which clearly sets out the context and purpose of the said enactment. It was put in at such length only with a view to aid the interpretation of its provisions. It was not done without a purpose. To call the entire exercise a mere waste is, to say the least, most unwarranted besides being uncharitable. The Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the Legislature and the Executive are expected to show due regard and deference to the Judiciary. It cannot also be forgotten that our constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of `checks and balances' inherent in such scheme.

18. Though the above propositions are well settled, it may not be out of place to refer to a few decisions. In Charanjit Lal Chowdhary v. Union of India [A.I.R. 1951 S.C. 41], Fazal Ali, J. stated: "......it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles". In Burrakur Coal Company v. Union of India (A.I.R. 1961 S.C. 654 AT 963], Mudholkar, J., speaking for the Constitution Bench, observed: "Where the validity of a law made by a competent legislature is challenged in a court of law, that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any

provision of the Constitution the law can be sustained."

19. We may quote the pertinent propositions enunciated in Ram Krishna Dalmia, Etc. v. Justice S.R. Tendolkar & Others Etc. [A.I.R. 1958 S.C. 538] to the following effect:

"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and.."

20. We may also refer to the following perceptive observations in the decision of Lord Denning is Seaford Court Estates Ltd. v. Asher [1949 (2) K.B. 481]:

"Whenever a statute comes up for consideration it must be remembered that it is not within human power to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsman have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the writter word so as to give `force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden. . . . . . Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

20. Considering the submission of Mr. Advocate General about the rationality behind fixing the date of applicability of the amendment in the statute, I do not find any arbitrariness in fixing the *cut off* date for applicability of the amendment in the Triple Benefit Statute.

21. Thus considering the amendment in the light of the judgment of the Apex Court in **State of Bihar & Ors. Vs. Bihar Distillery Ltd. & Ors. (1997) 2 SCC 453**, the contention of Mr. Kanth appearing on behalf of the petitioners lacks substance and accordingly I am of the view that there is rationality behind fixing the *cut off* date 31.8.2010 for the applicability of the Statute and there is no scope for any judicial articulations to give different meaning to the unambiguous intention of the framer behind amendment of the Statute vide Annexure-8.

22. Adverting to the third issue i.e. whether exclusion of teachers retired before 31.8.2010 is arbitrary or not?, Mr. Kanth relied upon the judgment of the Apex Court in the case of **D.S.Nakara and others Vs. Union of India: AIR 1983 Supreme Court 130,** in paras 2,11,15,31,35,49 and 58, it has been held as follows:

> "2. Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ('1972 Rules' for short) form a

class as a whole ? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date ? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art. 14 ? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.

11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others.: AIR 1958 SC 538) The classification may be founded on differential basis according to objects sought to be achieved but

what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

15. Thus the fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differntia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Art. 309 and clause (5) of Art. 148 of the Constitution ; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they

would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

35. With this background let us now turn to the challenge posed in these petitions. The challenge is not to the validity of the pension liberalisation scheme. The scheme is wholly acceptable to the petitioners, nay they are ardent supporters of it, nay further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the Government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt, the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned Government servant actually retired from service.

49. But we make it abundantly clear that arrears are not required to be made because to that extent the

scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after the date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

58. Now if the choice of date is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing an otherwise homogeneous class, the question is whether the liberalised pension scheme must wholly fail or that the pernicious part can be severed, cautioning itself that this Court does not legislate but merely interprets keeping in view the underlying intention and the object, the impugned measure seeks to subserve? Even though it is not possible to oversimplify the issue, let us read the impugned memoranda deleting the unconstitutional part. Omitting it, the memoranda will read like this :

> "At present, pension is calculated at the rate of 1/80th of average emoluments for each completed year of service and is subject to a maximum of 33/80 of average emoluments and is further restricted to a monetary limit of Rs. 1,000/- per month. The President is, now, pleased to decide that with effect from 31st March, 1979 the amount of pension shall be determined in accordance with the following slabs."

If from the impugned memoranda the event of being in service and retiring subsequent to specified date is severed, all pensioners would be governed by the

> liberalised pension scheme. The pension will have to be recomputed in accordance with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague, unenforceable or unworkable."

From the discussion of the Apex Court in these paragraphs, it is evident that classification for the purpose of computation of pension from the heterogeneous class of pensioners was held to be arbitrary. Therefore, in order to attract the judgment of the Apex Court in **D.S.Nakara** case (supra), this Court has to examine whether the teachers or non-teaching employees of Deficit Grant Affiliated Colleges/Deficit Grant Minority Colleges retired before 31.8.2010 or thereafter form heterogeneous class or homogeneous class like the teachers or non-teaching employees of the University and constituent Colleges. Under the scheme of the University constituent colleges and affiliated colleges have distinct meaning. The Deficit Grant Affiliated Colleges or Deficit Grant Minority Colleges are not the constituent unit of the University or the employees of those institutions are not employees of the University. Therefore, by no stretch of imagination the teaching and non-teaching employees of Deficit Grant Affiliated Colleges/Deficit Grant Minority Colleges form same class of teaching and non-teaching employees of the University and Constituent colleges. From the scrutiny of the facts it is also clear that the scheme of pension was introduced vide resolution of the State Government No. 171 dated 18.1.2011 and the amendment in the Statute was approved on 15.1.2014 but with effect from 31.8.2010. So far as the claim as to applicability of Triple Benefit to the employees of Deficit Grant/affiliated/aided minority colleges who retired before 31.8.2010 under the amended scheme as they form homogeneous class is concerned, it is misconceived unlike **D.S.Nakara** case (supra) in the Statute in question. No artificial distinction has been drawn between the classes of the employees covered under the Deficit Grant Affiliated Colleges/Deficit Grant Minority Colleges covered by the amendment under the Statute. The judgment in Nakara case is inapplicable in this case as it is distinguishable on facts.

23. The judgment of the Apex Court in **D.S.Nakara** was considered by the Apex Court in Krishna Kumar Vs. Union of India: (1990) 4 SCC 207 the Apex Court has occasion to distinguish the judgment in D.S.Nakara case and distinction was drawn on fact and held out that petitioners form heterogeneous

and not homogenous class and as such D.S.Nakara's case has no application.

24. Again in the case of I**ndian Ex-services League & Ors. Vs. Union of India: (1991) 2 SCC 104** the Constitution Bench of Apex Court held out that the decision in D.S.Nakara has to be read for limited application and it cannot be enlarge to cover all claims made by pensioners. Paras 4 and 19 to 23 are quoted below.

> 4. After summing up the concept of pension as above, the Constitution Bench set out the challenge of the petitioners in that case and indicated that the challenge was merely to that of the scheme by which its benefits were confined to those who retired from service after a certain date. Even though, undoubtedly the benefit of the scheme is available only from the specified date irrespective of the date of retirement of the concerned Government servants, it was pointed out that all pensioners irrespective of the date of their retirement constitute one class for grant of the benefits of the liberalised pension scheme and no further classification within them is permissible for this purpose with reference to their date of retirement. This was stated thus:
>
> "If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such

classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retired later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory......... The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art.14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Art. 14".

19. The petitioners' claim that all pre-1.4.1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices `A' `B' and `C' for each rank is clearly untenable and does not flow from the nakara decision.

20. We may now deal with the remaining contentions. It Writ Petition No. 4524 of 1985, one of the reliefs claimed is for family pension. It has been pointed out by the learned Solicitor General that provision has been made for the same by the Government of India (Ministry of Defence) in memorandum No. F. 6(2)/85/1689/B/D (Pension/Services) dated 8.8.1985 which has been issued in compliance of this Court's decision in Smt. Poonamal and Others v. Union of India and Others, [1985] 3 S.C.C. 345). That grievance no longer survives. Other reliefs claimed in this writ petition by an ex-serviceman are the same as in other writ petitions.

21. One of the prayers made in these writ petitions is for grant of same Death-cum-Retirement Gratuity to the pre-1.4.1979 retirees as to the post-1.4.1979 retirees. A similar claim was rejected by this Court in State Government Pensioners' Association and Others v. State of Andhra Pradesh, [1986]3 S.C.C. 501 on the ground that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid on that footing the transaction was completed and closed. It could then not be reopened as a result of the enhancement made at a later date for persons

retiring subsequently. This concept of gratuity being different form pension has also been reiterated by the Constitution bench in krishena Kumar's case. With respect, we are in full agreement with this view. This claim of the petitioners also, therefore, fails.

22. Another claim made is for merger of D.A. backwards also. From 1.1.1973 everyone is being paid D.A. in addition to the pension. The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement and, therefore, there is no ground to include D.A. at a time when it was not paid. This claim also in untenable.

23. Learned counsel for the petitioners referred to certain decisions which it is unnecessary to consider at length since they where cited only for reading the Nakara decision in the manner suggested by petitioners. The decision of this Court Union of India v. Bidhubhushan Malik and Others, [1984]3 S.C.C. 95 by which special leave petition was dismissed against the decision of the Allahabad High Court reported in AIR 1983 Allahabad 209 is also of little assistance in the present case. This Court while dismissing the special leave petition upheld the Allahabad High Court's view that the liberalised pension became operative under the High Court Judges (Conditions of Service) (Amendment) Act, 1976, from 1.10.1974 and applied to all retired High Court Judges irrespective of the date of their retirement and there is no question of payment of arrears of pension for the period preceding 1.10.1974. We are unable to appreciate the relevance of this case to support the petitioners' claim in these writ petitions

25. In fact, the Apex Court has examined the fixation of *cut off* date in the matter of grant of benefit in normal cases in the case of State of **West Bengal & Ors. Vs. Ratan Behari Dey & Ors.: (1993) 4 SCC 62**. The Apex Court has examined the competence of the State or its instrumentalities as to the change of the service condition including terminal benefits as well as pensionary benefits. The Apex Court has discussed the core principle in paragraphs 4 to 10 which are relevant and quoted hereinbelow:

> "4. The writ petitioners (respondents 1 to 43 in these appeals) approached the High Court of Calcutta in the year 1985 for issuance of writ of mandamus applying the said Regulations to all those employees who retired even prior to April 1, 1977. The prayer was granted as prayed for. The High Court has mainly relied upon the decision of this Court in D.S. Nakara and Ors. v. Union of India: (1983) 1 SCC 305. The High Court was of the opinion that all the retired employees of the Corporation constituted one single class and classifying them into two categories with reference to April 1, 1977 is neither reasonable nor is it in any manner related to the object of the Regulations. The correctness of the said view is challenged in these appeals.
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> 5. The learned Counsel for the appellants, S/Sri S.B. Sanyal and D.N. Mukherjee relied strongly upon the later decision of this Court in Krishena Kumar v. Union of India and Ors.: (1990) 4 SCC 207, a decision of the Constitution Bench. It is submitted

that the specification of April 1, 1977 as the date from which the Pension Scheme provided by 1982 Regulation was to come into force was neither arbitrary nor discriminatory. The writ petitioners who had retired prior to April 1, 1977 and had drawn out the terminal benefits permissible to them, constituted a different class from those who retired after April 1, 1977 and were governed by Regulations. Counsel submitted that the High Court was not right in holding that the Government and Corporation have not satisfactorily explained the reasons for specifying April 1, 1977 as the date from which the Regulations were given effect to. They submitted that the representation of the employees for grant of pension was reiterated in the year 1977 and the appointment of Pay Commission to examine their claim was also ordered in the financial year 1977-78. Though the Commission submitted its report later and it was accepted after some time, the Government was justified in fixing the first day of the financial year 1977-78 as the date from which the said Regulations were to be given effect to.

6. Sri P.P. Rao, learned Counsel appearing for the respondents 1 to 43 not only relied upon the principle of Nakara but also tried to distinguish the decision in Krishena Kumar. He submitted that the Regulations were not merely prospective; they were given retrospective effect on and from April 1, 1977. The employee who retired on or after April 1, 1977 but prior to the date of publication of the Regulations were situated similarly to the writ petitioners. All of them were governed by the Provident Fund Scheme. But the Regulations created a distinction among them with reference to an artificial date viz., April 1, 1977.

Those who retired earlier to the said date were made ineligible for the benefit of the Pension Scheme while those who retired on or after the said date were made eligible. A similar option, as has been given to the employees retiring on or after April 1, 1977 but before the date of publication of the Regulations, ought to have been given to all those employees who retired prior to April 1, 1977 but were alive on the said date. Since this was not done, the appellants must be held to have discriminated against the employees retiring prior to April 1, 1977.

7. In our opinion, the principle of Nakara has no application to the facts of this case. The precise principle enunciate in Nakara has been duly explained in Krishena Kumar by a coordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay-scales as also terminal benefits/pensioners benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the

Court in that behalf. It appears that in the Calcutta Corporation, a pension scheme was in force prior to 1914. Later, that scheme appears to have been given up and the Provident Fund Scheme introduced Under the Provident Fund Scheme, a certain amount was deducted from the salary of the employees every month and credited to the Fund. An equal amount was contributed by the employer which too was credited to the Fund. The total amount to the credit of the employee in the Fund was paid to him on the date of his retirement. The employees, however, were demanding the introduction of a pension scheme. The demand fell on receptive years in the year 1977. may be because in that-year the Left Front Government came to power in that State, as suggested by the writ petitioners. The State government appointed a Commission to examine the said demand and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars. The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government fact which could not have been unknown to the Corporation employees. We cannot say that the Government acted unreasonably in specifying the said date. It may also be that, that was the year in which the Left Front came into power in that State, but that does not detract from the validity of the aforesaid reasons assigned by the State in its counter-affidavit filed before the Division Bench of the High Court. We are not in agreement with the opinion expressed by the High Court that the reasons assigned by the State Government are neither relevant not acceptable.

8. In this context, it may be remembered that the power of the State to specify a date with effect from which, the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date in this case is neither arbitrary now unreasonable, the complaint of discrimination must fail.

9. Now coming to the argument of Sri P.P. Rao that the Regulations bring about an unreasonable classification between similarly placed employees in concerned, we must say that we are not impressed by it. It is not submitted that the Corporation had no power to give retrospective effect to the Regulations. It was within the power of the Corporation to enforce the Regulations either prospectively or with retrospective effect from such date as they might specify. Of course, as repeatedly held by this Court, in such cases the State cannot, as the expression goes, pick a date out of its hat. It has to prescribed-tire date

in a reasonable manner, having regard to all the relevant facts and circumstances. Once this is done, question of discrimination does not arise. Reference in this behalf may also be had to the decision of this Court in Sushma Sharma v. State of Rajasthan: 1985 Supp. Scc 45, a decision of the Division Bench comprising E.S. Venkataramiah and Sabyasachi Mukherji, JJ.

10. As rightly pointed out in Krishena Kumar, Nakara was a case where an artificial date was specified classifying the retirees, governed by the same Rules and similarly situated, into two different classes, depriving one such class of the benefit of liberalized Pension Rules. It was found in that case that the specification of the date (from which the liberalised Rules were, to come into force) was arbitrary. Whereas in this case, the employees retiring prior to April 1, 1977 and those retiring thereafter were governed by different sets of Rules. The argument to the contrary may mean that the Government can never change the conditions of service relating to retrial benefits with effect from a particular date. No such absolute proposition can be stated that while effecting any such change, no date from which such change will come into force can be specified. As stated above, a date can be prescribed but such date should not be drawn in such a manner as to bring about discrimination between persons situated similarly i.e., in a manner violative of Article 14. This aspect has been elaborately dealt with and explained in Krishena Kumar and we do not think it necessary to repeat the same.

26. Again in the case of **Commander Headquarter, Calcutta & Ors. Vs. Capt. Biplabendra Chanda: (1997) 1 SCC 208** the

Apex Court considered the applicability of new and revised rule which were not given retrospective effect like the present one. The Apex Court noticing the applicability of Rule with effect from 1.1.1986 held out that there is no infirmity in fixing *cut off* date to come into force the new rule referring to the judgment of the Constitution Bench in Krishna Kumar Vs. Union of India, paras 4 and 5 of the said judgment is quoted below:

> **4.** We are of the opinion that the ratio of D. S. Nakara (AIR 1983 SC 130) has no application here. D. S. Nakara prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised Pension Rules as the cut-off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefor as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from 1.01.1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from 1.01.1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting

the respondent's contention would have very curious consequences even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. This cannot be.

5 The decision in D. S. Nakara (AIR 1983 SC 130) has indeed been explained by two subsequent Constitution Bench decisions of this Court in Krishna Kumar V/s. Union of India, (1990) 4 SCC 207 and Indian Ex-Services League V/s. Union of India, (1991) 1 SCR 158 : (1991 AIR(SCW) 327). In the latter decision, it has been held that "the petitioners' claim that all pre-1-4-1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices 'A', 'B' and 'C' for each rank is clearly untenable and does not flow from the Nakara decision". We may also refer in this connection to the observations in another decision of this Court in State of West Bengal V/s. Ratan Behari Dey (1993) 4 SCC 62 : (1993 AIR(SCW) 2980, Paras 7 and 8) to the following effect :

> "... it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits / pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits / pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the Court in that

> behalf... the power of the State to specify a date with effect from which the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory. Since we have found that the prescription of the date in this case is neither arbitrary nor unreasonable, the complaint of discrimination must fail."

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27. The Apex Court has again considered the case of fixing *cut off* date for the purpose of judicial review with reference to D.S. Nakara in the case of Govt. of **Andhra Pradesh & Ors. Vs. N. Subbarayudu & Ors.: (2008) 14 SCC 702,** paras 6 to 9 of the said judgment is guiding matrix for the purpose of the present case which is quoted below.

> "6. No doubt in D.S. Nakara & Ors. vs. Union of India 1983(1) SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in State of Punjab & Ors. vs. Amar Nath Goyal & Ors. (1983) 1 SCC 305.
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> 7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can

be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar vs. Ramjee Prasad 1990(3) SCC 368, Union of Indian & Anr. vs. Sudhir Kumar Jaiswal 1994(4) SCC 212 (vide para 5), Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors. 2004 (2) SCC 76 (vide para 31), University Grants Commission vs. Sadhana Chaudhary & Ors. 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr. 2008(3) 3 JT 221 and in Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi 2008(2) 8 JT 639 the Court must maintain judicial restraint in matters relating to the legislative or executive domain.

28. In the case of **State of Himachal Pradesh and others Vs. Rajesh Chander Sood and others: (2016) 10 SCC 77**, the Apex Court has examined the issue of withdrawal of pension scheme and the prospectivity of such revocation of pension by fixing *cut off* date, the Apex Court examined the various aspect of constitutionality of policy decision regarding the withdrawal of pension scheme. The Apex Court upheld the legality and constitutionality of the policy decision of repeal notification vide paras 75,76 and 95 which are worth quoting.

> 75. Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view, that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut-off date can therefore legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are therefore satisfied to conclude, that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned repeal notification dated

2.12.2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in the R.R. Verma case (supra), wherein this Court held, that the Government was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the above mentioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power, should be in consonance with all legal and statutory obligations.

76. It is equally true, that the power of administrative review can only be exercised, for a good and valid justification. Such justification besides being founded on reasonable consideration, should also not be violative of any legal right - statutory or constitutional, vested in the affected employees. Insofar as the permissibility of the administrative action taken, in issuing the impugned repeal notification

dated 2.12.2004 is concerned, whether the said power was exercised by the State Government for good and valid reasons, and/or whether the same violated any statutory or constitutional right vested in the respondent-employees, shall be examined by us in the succeeding paragraphs.

95. Our determination, with reference to all the issues canvassed above, would also answer the question left open in paragraph 52 above. Namely, whether or not the contingent right, as was vested in the respondent- employees, was binding or irrevocable. We may now sum up the position determined by us, in the foregoing paragraphs. It is no doubt true that we have concluded, that 'the 1999 Scheme', created a contingent right in the respondent-employees. The respondent-employees comprise of all those employees of corporate bodies, who had opted for 'the 1999 Scheme', immediately on its having been introduced; all those, who were deemed to have opted for 'the 1999 Scheme' by not having exercised any option; and all those who were appointed after the introduction of 'the 1999 Scheme'. The first issue that arises is, whether any

express right or obligation existed, between the respondent-employees and the State Government. One can understand, such a claim arising out of an obligation between an employer and his employees, where there is a quid pro quo – a trade off based on a relationship (as between, an employer and employee). We have however concluded, that there was no such relationship between the State Government, and the respondent-employees. All the corporate bodies in which the respondent-employees were/are engaged, are independent juristic entities. It is therefore apparent, that the claim raised by the respondent-employees, is not based on any right or obligation between the parties. We have also examined the submissions advanced by learned counsel premised on various constitutional provisions (Articles 14, 16, 21 and 300A of the Constitution of India), but have found, that no right can be stated to have been violated, thereunder. We have also examined the other legal submissions, advanced on behalf of the respondent-employees, and have found the same, as unjustified. The issue whether administrative review was

> permissible, after 'the 1999 Scheme' had become operational, has been answered in the affirmative. And finally, we have concluded, that the exercise of such power, while issuing the repeal notification, was based on due consideration. We therefore hereby uphold, the legality and constitutionality of the notification dated 2.12.2004."

29. The Apex Court has even approved the withdrawal of pension scheme on consideration of the reasonableness of such scheme. In the light of the judgments of the Apex Court after the judgment in D.S.Nakara case, I am of the considered view that the subsequent judgment has clarified the legal position that the D.S.Nakara case is not applicable in the matter of fixation of *cut off* date in all cases of pension. The subsequent judgment has clarified the legal position as to applicability of the principles discussed in D.S.Nakara case. It has been held out in subsequent decision that it does not apply in all situation of retired employees for grant of pension. The subsequent judgments of the Apex Court has approved the fixing of *cut off* date for applicability of pension scheme. It has even approved the withdrawal of pension Scheme. Considering the present case in the light of the judgment referred to in the case of **Krishna Kumar** (supra), and other judgment of

the Constitution Bench and other subsequent judgments of the Apex Court, I am of the considered view that the judgment in **D.S.Nakara** case is not applicable in the present case, firstly, that there is no arbitrariness as to applicability of the *cut off* date of amendment in the Triple Benefit Scheme Statute as it has rationality behind i.e. on which date the Cabinet has decided the matter of granting Triple Benefit Scheme to Deficit Grant Affiliated Colleges and Deficit Grant Minority Colleges. I am also of the considered view that judgment in D.S.Nakara case is of no help to the petitioners as they do not form homogeneous class rather heterogeneous class. In my opinion, in this case the beneficiary of the amended Statute covered by the pension scheme w.e.f. 31.8.2010 form homogeneous class and not those who retired prior to coming into force the amended Statute. I am also of the considered view that in view of the unambiguous resolution of the State Government dated 11th January, 2011 unambiguous amendment in the Statute whereby the benefit of pension was extended only to those who were in service on the date of applicability of the Statute, there is no ambiguity which requires judicial articulation to extend such benefit to the writ petitioners.

30. In view of the discussions made above as to the interpretative process and the approach of the Court while

deciding the constitutional validity and the peculiar facts of this case, I am of the considered view that there is no infirmity in the policy decision of the State Government contained in Annexure-7 dated 18.1.2011 and the Statute approved by the Chancellor in the light of policy decision vide memo dated 15.1.2014.

31. Accordingly, all the writ applications are dismissed.

(Anil Kumar Upadhyay, J)

Rajendra Menon:- I agree.

spandey/-

(Rajendra Menon, CJ)

AFR/NAFR	AFR
CAV DATE	17.10.2017
Uploading Date	08.11.2017
Transmission Date	